Judging the Judges

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Abstract

The manner in which contempt proceedings are often initiated at the drop of a hat by some aggrieved members of the judiciary makes one wonder whether this tendency is not becoming comparable to the invocation of the blasphemy law by the religious establishment in Pakistan

Article

Should our honourable judges haul up the chief justice of India for contempt of court? Justice S P Bharucha has at last come out with an admission which every Indian had known all these years through their own experiences, but had not dared to utter in public for fear of being thrown behind bars. At a conference in Delhi in February, the honourable chief justice said that 20 per cent of Indian judicial officers, i, e, judges in the lower courts, were corrupt.[1]

For saying much less than this, in April last, the Delhi High Court had initiated proceedings in a contempt case against a magazine. The fault of the Delhi-based Wah India magazine was that in one of its issues it had published a survey rating Judges on the points of integrity, the quality of judgment and their conduct in court. The high court, taking objection to the published survey, not only issued notice to the editor and staff of the magazine asking them to show cause "why they should not be punished for contempt of court", and directed the police to seize and confiscate copies of that particular issue of the magazine, but also ordered that "no one shall publish…any article, news, letter or any material which tends to lower the authority, dignity and prestige of the members of the judiciary."

Surprisingly, none of the media personalities or the journalists' organisations cared to challenge this blanket ban - except making a few whimpering noises in newspaper columns. All that was done was that an application was made to the high court by editors of some national dailies requesting it to reverse only one of its several orders - namely that preventing the reporting of the proceedings of the contempt case. In response to this petition - as also to an unconditional apology rendered by the editor, publisher and three journalists of Wah India - the high court conceded by lifting the ban on reporting the contempt proceedings and promising to 'consider' the apology, while reserving its order on the case. But it made it clear that while the proceedings could be published, "all other conditions stand" - which implied that the earlier judgment prohibiting publication of articles, or even news, that were considered by the courts as lowering their "authority, dignity and prestige", still remained effective.

But in the midst of all these contempt proceedings - which are often initiated at the drop of a hat by some aggrieved members of the judiciary - one

wonders whether the obsessive predilection for invoking the law of contempt in India is not becoming as obnoxious as the fanatically religious proclivity to invoke the blasphemy law in Pakistan. It is interesting to note that in the Wah India case, it was the Bar Council of Delhi which filed a petition against the journal to the Delhi High Court, and its advocate argued that the survey about the functioning of the judges, carried by the magazine, "can never become a matter of public discussion and amounts to criminal contempt of court". Yet, everyone knows that neither the behaviour nor the verdicts of judges are sacrosanct. The same judge of the lower court who threatens to take action against anyone criticising his judgment has to grudgingly accept strictures on the same judgment from his superiors in the higher courts. Everyone knows that a judgment delivered by judges in the lower courts, or the high courts, can be reversed by the apex court - as often happens. Given this experience, why should these judicial officers, or the high court judges resort to the contempt of court privilege to counter criticism of their behaviour or judgments? Is it some ego problem that eggs them to take it out on the common citizen who dares to denounce their judgments, and who cannot afford to challenge them by approaching the apex court?

I am sure members of the public from their personal experience of the daily functioning of the lower courts in our country can provide enough material to substantiate the allegation made by Justice Bharucha about the Indian judicial officers. But if they dare to make the allegation in public, the entire judicial community will pounce upon them to punish them on the sacrosanct ground of 'contempt of court'.

Justice Bharucha's observations however move beyond these petty ego problems of the judges. He hits the nail on something which has corroded the judicial system in India - corruption. Further, corruption is neither confined to the lower courts only, nor is it a recent phenomenon. More than a decade ago, a Supreme Court judge, Justice Ramaswamy, was accused of irregularities in withdrawal of TA and DA and extravagant expenditure on his house when he was the chief justice of the Punjab and Haryana High Court. He however escaped impeachment when proceedings against him were frustrated primarily by division among the MPs in parliament. At around the same time, allegations of corruption were made against a senior judge of the Bombay High Court. But nothing came out of it, as the then ruling National Front felt that the judiciary itself should apply corrective measures, and that the government should not launch inquiries into the conduct of judges because of the danger of the executive misusing its powers. Since then, in spite of numerous corrective measures suggested by judicial experts and even the Judicial Commission, both the executive and the judiciary have seemed to play safe and refuse to take the bull by the horns. Incidentally, while Justice Bharucha's information does not come as a surprise to the hardened

victims of the Indian judicial system, a western judicial expert was shocked out of his nerves when he spent a week in Andhra Pradesh in April last year at the invitation of the Chandrababu Naidu government as a consultant to study corruption in his administration. Naive as this poor westerner was, Bertrand de Speville - described as an 'anti-corruption expert' appointed by the Naidu government - said in an interview that he was startled to find corruption in the judiciary and reminded his Indian readers that corrupt judges had no immunity under the Indian Constitution (The Times of India, April 28, 2001).[2]

At the end of all this, one is left with the suspicion that like the executive, the judiciary also might have been vulnerable to political pressures that could have prevented it from reforming itself and maintaining its independence. As a result, both plaintiffs and defendants might be receiving judgments which could be tainted by extraneous influences - a possibility corroborated by Justice Bharucha's latest admission that 20 per cent of the judicial officers are corrupt.

Apart from charges of corruption, the other public complaint about the judiciary is that its judgments are ill-conceived, illprepared and even biased. This allegation again has been recently confirmed to some extent by another senior Supreme Court judge. Justice K T Thomas, who retired at the end of January, in an interview with a national daily, confided that judges were woefully undertrained to handle the responsibility their work demanded. It was not only the judges of the subordinate judiciary that he was talking about. He added: "High court judges must volunteer to undergo training, at least in the initial stages, so that they learn basics like pronouncing judgments without delay" (The Indian Express, February 19, 2002).

The need for such training is extremely essential for judges who, like all human beings, are also susceptible to their socioeconomic biases, time constraint and other pressures which can shape their judgments, often to the detriment of those seeking justice. We have seen how our courts are often breathtakingly generous in granting relief to criminals who enjoy higher socioeconomic status, or who can get away by either intimidating witnesses or employing lawyers to defend them. The classic instance is that of the Madras High Court judges who while acquitting the landlords of Kilavenmani, Tamil Nandu, accused of burning to death 42 dalit workers on December 25, 1968, defended them by stating: "Most of them are rich men owning vast extents of land…it is difficult to believe that they themselves walked bodily to the scene and set fire to the houses…" Take another case. In July 1995, a principal sessions judge in Madras, while defending his granting of anticipatory bail to the then fugitive tandoori murder suspect Sushil Sharma (a man with highly-placed political connections), came out with the

astounding admission: “In a single day we pass several dozen bail applications and there is no time or means of scrutinising signatures” (The Indian Express, July 9, 1995). The judge was later admonished by the high court. In matters relating to women’s dignity and safety, even our Supreme Court has not always taken a fair stand. In July 2000, the apex court acquitted two school teachers accused of raping their colleague, who unable to withstand the humiliation committed suicide. The court absolved the two of the charge of abetment to suicide, and by doing so also acquitted them of the charge of rape. This was in spite of an earlier Supreme Court judgment in another rape case which stated that showing mercy in such cases would be a “travesty of justice.”

Given this rather unsatisfactory record of the judiciary, instead of being quick to take offence at the slightest criticism, its members should be honest enough to turn their critical attention to their own selves. Self-opinionated postures should give way to dispassionate self-examination, so that they can purge their community of the black sheep (even if 20 per cent) that have given them a bad name, and train themselves to improve their performance in order to restore people’s faith in justice.

1. Judicial corruption

2. Consultant says corrupt judges have no immunity